IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16755 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NNAJI JADAVJIBHAI MANGE - Petitioner(s)
Versus
DISTRICT MAGISTRATE-JAMNAGAR & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 4,
Mr. Pratik Acharya, Asst.GOVERNMENT PLEADER for Respondent(s) : 2,
MR HARIN P RAVAL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 30/10/2007
ORAL JUDGMENT

The petitioner has invoked Articles 21, 22 and 226 of the Constitution of India to challenge the order dated 10th June 2007 of his detention under the provisions of Prevention of Black

Marketing and Maintenance of Supply of Essential Commodities Act, 1980, ["the PBM Act" for short]. The petition was pressed on the solitary ground of delay in consideration of his representation dated 15.6.2007.

2. By filing the affidavit of District Magistrate, Jamnagar, it is stated that the statement before the District Supply Officer revealed that he used to prepare false bills in the name of those customers who had not purchased through ration card and then made false entry in their ration card about purchase of the respective items. The State Government had floated a B.P.L. (Special) Scheme and irregularities were committed by the petitioner in dealing with the stock under that scheme. The petitioner was professed to be holding the post of Manager with the cooperative society, but at the time of enquiry he submitted that the fair-price shop was the only source of his income, and thus in short he was alleged to have committed breach of the Order of 2004 Clause 3, 10, 18(4)(g) as well as Section 7(3) of the Essential Commodities Act and hence the license was suspended for 90 days. A police complaint was also filed against the petitioner over and above suspending the fair-price shop license. Representation made by him through his advocate was received by the District Magistrate on 22.6.2007. According to the affidavit of the Joint Secretary to the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department, the order of detention dated

10.6.2007 was approved by the State Government on 21.6.2007 and the detenu was actually detained on 11.6.2007. After approval of the order of detention the representation was sent by the State Government to the Central Government within the prescribed time limit of seven days. A representation dated 15.6.2007 received in the Food, Civil Supplies & Consumer Affairs Department on 21.6.2007 was placed before Section Officer with file on 22.6.2007 who cleared it on the same day. Thereafter it was placed before the Hon'ble Minister of Civil Supplies on 25.6.2007 who decided to reject the representation on 25.6.2007. The P.B.M. Advisory Board also confirmed the detention order of the detenu.

3. By filing affidavit of the Under Secretary of the Department of Consumer Affairs, Food and Public Distribution, New Delhi, it is submitted that the representation dated 13.6.2007 was received in the Central Government on 19.6.2007 and in the concerned Section on 20.6.2007 through office of the District Magistrate, Jamnagar. Another representation dated 15.6.2007 was received in the Central Government on 20th June 2007 and in the concerned Section on 21.6.2007. After examining the representation it was seen that certain averments were made regarding non-supply of documents, cancellation of detenu's licence etc., which were required to be verified. Hence para-wise comments on the representations dated 13.6.2007 and 15.6.2007 were called for from the State Government by letter dated

17.7.2007. Those comments were awaited till affirmation of affidavit on 24.7.2007.

4. By filing another affidavit of Under Secretary to the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, it is averred that the detenu has made two separate representations through two separate advocates and the record show that systematically such procedure is followed and it appears that with a view to make out a ground as regards delay or non-consideration of representations, such simultaneous or successive representations are made to the Central Government so that at least some ground could be made out on the basis of which order of detention can be quashed. The detention order and the grounds of detention were examined in detail by the Central Government and it was observed that certain averments made in the representation required clarifications from the State Government. In view of several allegations made by the detenu and in absence of any comments in that regard, while forwarding the representation, clarifications were sought and as no clarifications were received within two weeks, reminder was sent to the State Government on 30th July 2007. Inspite of those and subsequent reminders, the Central Government had not received the clarifications.

4.1. By filing the affidavit of the Joint Secretary to the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department, it is submitted that pursuant to the queries of the Central Government necessary remarks and clarifications were sought from the office of District Magistrate, Jamnagar by his department vide his letter dated 24.7.2007 and the District Magistrate had sent reply dated 30th July 2007 which was received on 10th August 2007. Again, clarification was demanded by his department by letter dated 13th August 2007 and since no clarification was received within a reasonable time from the office of District Magistrate, Jamnagar, reminders were sent by letters dated 18.8.2007, 23.8.07, 5.9.07 and 11.9.2007. Even after five reminders, the office of the District Magistrate, Jamnagar has sent its reply dated 10.9.2007 which was received on 17.9.2007, which in turn was forwarded to the Central Government by speed post on 17.9.2007. It is clearly averred on oath that the office of District Magistrate, Jamnagar has not remained cooperative in the matter of forwarding clarifications and/or details to enable the answering respondent to forward clarifications/para-wise remarks to the Central Government.

5. It was submitted on that basis that in view of the fact that the representation of the petitioner was not considered and decided within reasonable time the inordinate delay on the part of the competent authority was required to be explained. It was

therefore submitted that the petitioner was entitled to be released and continuation of his detention was not justified due to violation of provisions of Article 22(5) of the Constitution. Learned counsel relied upon the judgment of the Supreme Court in **Senthamilselvi v. State of Tamil Nadu and Another [(2006) 5 SCC 676]** wherein it is observed in paragraph 6 that: "……*It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable.*"

6. Learned AGP appearing for respondents No. 1 to 3 and the learned Assistant Solicitor General of India appearing for the Union of India fairly conceded to the factual position that delay in consideration of the representation of the petitioner was not explained much less satisfactorily explained, as far as the time taken by the Magistrate in forwarding the clarification was concerned.

7. In the above facts and circumstances, the petition is allowed. The impugned order dated 10th June 2007 passed by the respondent No.2 for detention of the petitioner is set aside. It

might be a case of abdication of duty on the part of the District Magistrate or the officers in the Government of Gujarat if they have to admit on oath that the office of District Magistrate, Jamnagar had not been cooperative in the matter of forwarding clarification, when no explanation therefor was forthcoming even after the above statement being made on oath and being put to use by the petitioner for nullifying the impugned order.

8. With these observations, the petition is allowed with the direction that the petitioner shall be released forthwith if not required to be kept in jail in connection with any other case. Rule is made absolute accordingly. No order as to costs.

[D.H. Waghela, J.]

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